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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re application of : Attn: **BOARD OF PATENT APPEALS
AND INTERFERENCES**
Giovanni Pietro CHIAVAROTTI et al. :
Serial No.09/707,885 : Docket No. 2000-1545
Filed November 8, 2000 : **Confirmation No. 1381**

PROCESS FOR PRODUCING
AN ELECTRODE AND USE
OF THE ELECTRODE

MOTION TO STRIKE

**THE COMMISSIONER IS AUTHORIZED
TO CHARGE ANY DEFICIENCY IN THE
FEE FOR THIS PAPER TO DEPOSIT
ACCOUNT NO. 23-0975.**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Appellants hereby respectfully move to strike the PTO Communication mailed February 2, 2004 in which the Examiner presents a response to Appellants' Reply Brief.

According to 37 CFR 1.93(b)(1):


... The primary examiner must either acknowledge receipt and entry of the reply brief or withdraw the final rejection and reopen prosecution to respond to the reply brief. A supplemental examiner's answer is not permitted, unless the application has been remanded by the Board of Patent Appeals and Interferences for such purpose.

Reference is also made to MPEP 1208.03, which indicates that a supplemental examiner's answer is not permitted unless the application has been remanded by the Board for such purpose.

Since prosecution has not been reopened, nor has the application been remanded by the Board, it is inappropriate for the Examiner to respond to Appellants' Reply Brief. Accordingly, the PTO paper mailed February 2, 2004 should be stricken from the record.

Respectfully submitted,

Giovanni Pietro CHIAVAROTTI et al.

By: 
Michael R. Davis
Registration No.25,134
Attorney for Appellants

MRD/pth
Washington, D.C.
Telephone (202) 721-8200
Facsimile (202) 721-8250
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